

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN BLUMATTE a/k/a ROBERT ANGONA a/k/a
JOHN BLUE,

Plaintiff,

-against-

GERARD QUINN, DONALD ROGERS, et al.,

Defendants.
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**NOTICE OF MOTION
TO DISMISS**

07 Civ. 2944 (JSR)

PLEASE TAKE NOTICE that upon the Declaration of Shawn D. Fabian, dated June 28, 2007, the exhibits annexed thereto and the accompanying memorandum of law, dated June 28, 2007, and all pleadings and proceedings previously had herein, defendants Gerard Quinn and Donald Rogers ("City defendants") will move before the Honorable Jed S. Rakoff, on a date to be determined by the Court, at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York, located at 500 Pearl Street, New York, New York, for an Order pursuant to Fed. R. Civ. P. 12(c) to dismiss the complaint, in part, against the City defendants for failure to state a claim and for such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that plaintiff's opposition papers shall be served on July 16, 2007 pursuant to Judge Rakoff's Order. Defendants' reply papers, if any, are required, shall be served on July 20, 2007 pursuant to His Honor's Order.

Dated: New York, New York
June 28, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants Quinn and Rogers
100 Church Street
New York, New York 10007
(212) 788-0906

By: 
SHAWN D. FABIAN (SF4606)
Assistant Corporation Counsel
Special Federal Litigation Division

TO: J. Joseph Bainton, Esq. (By ECF & First Class Mail)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN BLUMATTE a/k/a ROBERT ANGONA a/k/a
JOHN BLUE,

Plaintiff,

-against-

GERARD QUINN, DONALD ROGERS, et al.,

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**DECLARATION OF SHAWN
D. FABIAN IN SUPPORT OF
CITY DEFENDANTS'
MOTION TO DISMISS THE
COMPLAINT**

07 Civ. 2944 (JSR)

SHAWN D. FABIAN, declares, pursuant to 28 U.S.C. §1746, under penalty of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendants Gerard Quinn and Donald Rogers. As such, I am familiar with the facts stated below and submit this declaration to place the relevant documents on the record in support of the defendants' motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(c).

2. Annexed hereto as Exhibit "A" is a copy of the Complaint filed with the Southern District of New York on or about April 12, 2007 ("Plaintiff's Complaint").

3. Annexed hereto as Exhibit "B" is a copy of the New York City Police Department Arrest Report ("Arrest Report").

4. Annexed hereto as Exhibit "C" is a copy of the Transcript on the matter of Indictment No. 2331/04, dated December 1, 2006, before the Honorable Ronald A. Zweibel of the Supreme Court of the State of New York, County of New York, Criminal Term, Part 41 ("Transcript").

Dated: New York, New York
June 28, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants Gerard Quinn and Donald
Rogers
100 Church Street
New York, New York 10007
(212) 788-0906

By:


SHAWN D. FABIAN (SF4606)
Assistant Corporation Counsel
Special Federal Litigation Division

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99 Park Avenue, 19th Floor
New York, New York 10016

DECLARATION OF SERVICE BY MAIL


I, **SHAWN D. FABIAN**, declare, pursuant to 28 U.S.C. §1746, under penalty of perjury that on **June 28, 2007**, I caused to be served the annexed **1) Notice of Motion and Supporting Declaration and 2) Memorandum of Law in Support of Defendants Motion to Dismiss** upon the following counsel of record by depositing a copy of same, enclosed in a first class postpaid properly addressed wrapper, in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to said plaintiff at the address set forth below, being the address designated by said plaintiff for that purpose:

J. Joseph Bainton, Esq.
Michael J. Little, Esq.
Bainton McCarthy LLC
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New York, New York 10004

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Kaufman Borgeest & Ryan LLP
99 Park Avenue, 19th Floor
New York, New York 10016

Dated: New York, New York
June 28, 2007



SHAWN D. FABIAN (SF4606)
ASSISTANT CORPORATION COUNSEL